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# In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 536

SANTA CRUZ FRUIT PACKING COMPANY, PETITIONER

*v.*

NATIONAL LABOR RELATIONS BOARD

*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

### OPINIONS BELOW

The opinions in the court below (R. 104–17) are reported in 91 F. (2d) 790. The findings of fact, conclusions of law and order of the National Labor Relations Board (R. 55–83) are reported in 1 N. L. R. B. 454.

### JURISDICTION

The decree of the court below (R. 138–41) was entered on July 31, 1937. The petition for a writ of certiorari was filed on October 28, 1937, and was granted on December 6, 1937. The jurisdiction of the Court rests on Section 240 (a) of the Judicial

Code as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

## QUESTION PRESENTED

Whether the National Labor Relations Act may validly be applied to the employees of a California cannery which derives the bulk of its fruit and vegetables from within the State of California and ships a substantial proportion, but less than 50 per cent, of its product in interstate and foreign commerce.

## STATUTE INVOLVED

The statute involved, hereinafter referred to as the Act, is the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Sup. II, Title 29, Sec. 151 *et seq.*). The pertinent provisions are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or

discourage membership in any labor organization * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

SEC. 2. (6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country,

SEC. 2. (7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

**STATEMENT**

Upon written charges duly filed by Weighers, Warehousemen, and Cereal Workers Local 38–44, International Longshoremen's Association, a labor organization, the Board, on November 2, 1935, issued and served upon petitioner its complaint and notice of hearing (R. 1–13). The complaint alleged that petitioner had engaged at its Oakland plant in

certain unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act (R. 5–12). Petitioner filed its answer on November 8, 1935, denying that it had engaged in unfair labor practices affecting commerce, as alleged (R. 14–20). On November 14, 1935, the Board issued an amended complaint (R. 20–28). By stipulation, the allegations of the amended complaint were deemed put in issue by petitioner's original answer (R. 149).

A hearing was held at Oakland, California, on December 23 and 24, 1935, and on January 2, 3, and 6, 1936, before a trial examiner duly designated by the Board. At the outset, petitioner moved to dismiss the complaint on constitutional grounds, and on others not here material (R. 145–46). This motion was denied (R. 149–50). Petitioner thereafter participated in the hearing to the extent of cross-examining witnesses called by the Board, but adduced no evidence in its own behalf. Full opportunity to examine and cross-examine witnesses and to adduce evidence was afforded the parties. At the close of the Board's case petitioner moved to dismiss on the ground that the evidence affirmatively showed that petitioner was not engaged in interstate or foreign commerce, and on the other grounds advanced in its prior motion (R. 757–58). This motion was denied (R. 33–34). On January 30, 1936, the trial examiner filed an intermediate report finding that petitioner had engaged in the

unfair labor practices affecting commerce alleged in the complaint (R. 30–48). Exceptions to this report were thereafter filed with the Board (R. 48–55). On April 2, 1936, the Board issued its decision sustaining the trial examiner's rulings and setting forth its findings of fact, conclusions of law, and order (R. 55–83).

Petitioner, the Board found, is a California corporation operating fruit and vegetable canneries at Oakland and Seabright, California. It is among the four or five largest concerns in the industry in that state, which is the center of the national canning industry. At the Oakland plant, the one here involved, petitioner employs during the "peak" season in the summer months from 1,200 to 1,500 men. The bulk of the agricultural commodities packed by petitioner are grown in California.

The Board found that in 1935 petitioner's "total pack"—which, in common with the court below and the petitioner, we understand to refer to the pack at the Oakland plant alone[1]—amounted to approxi-

[1] Although the Board's finding and the evidence upon which it was based, taken literally, may be open to the interpretation that they relate to the combined pack and out-of-state shipments of both the Oakland and the Seabright plants, the court below interpreted them as applying only to Oakland (R. 116). This view, which has not been questioned by either party, is supported by the record. It was to the operations at the Oakland plant that the proceedings were directed (cf. note 2, *infra*). And the finding in question was based upon a statement which petitioner's counsel offered to produce to avoid the delay resulting from exami-

mately 1,700,000 cases of canned fruits and vegetables, of which approximately 37 per cent (or 627,000 cases) were shipped in interstate and foreign commerce, 51 per cent were shipped to points within the State of California, and 12 per cent remained unsold in December 1935. The record does not show the nature of the sales organization or the sales methods by which petitioner has built up and maintained its national market; sales abroad are handled through brokers in the foreign markets who cable their orders to petitioner (R. 670). Actual shipments, the Board found, are made under f. o. b. San Francisco Bay Points sales contracts in the case of shipments to points in the United States outside the State of California, and under c. i. f. sales contracts (Canners' League Form) in the case of the bulk of the foreign shipments. There is a constant stream of loading and shipping of products out of the Oakland plant throughout the entire year. In 1935 approximately three to four thousand cases were loaded daily at that plant for shipment to points inside and outside the state by water, rail, and truck. The loading of the products of the Oakland cannery upon railroad cars and overland trucks and upon trucks for transportation to the

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nation of petitioner's Oakland warehousemen concerning out-of-date shipments from that plant (R. 406–409, 608). Although this statement gives the only aggregate figures in the record, it should be noted that other evidence amply supports the Board's finding (R. 62) that there was "a continuous flow of trade, traffic, and commerce" from the Oakland plant to points outside the state (e. g., R. 153-156, 218–223, 237–238, 284–285, 296).

docks was part of the work of petitioner's force of approximately 30 warehousemen, whose discharge was the basis of the unfair labor practices charged in the complaint (R. 60–63).

The Board found that Local 38–44 had commenced to organize the petitioner's warehousemen in July 1935. By the end of the month all the permanent eligible warehousemen had applied for membership. Upon first hearing of this development, on August 5th, Huddleson, general manager of the plant, called an unprecedented meeting of all the warehousemen at which he announced that he would not permit a union in the plant and threatened to let the work out to a contractor. This position Huddleson reiterated the following day in response to a request from the union to negotiate concerning terms of employment. On August 7th the warehousemen attended a union meeting, having first obtained assurance from their foremen that attendance would not lead to their discharge. Returning from the meeting, members of the night shift were prevented from entering the plant by a cordon of guards armed with sawed-off shotguns, and the next morning the members of the day crew were similarly excluded. Thereafter, petitioner operated its warehouse with non-union labor supplied by a contractor. Petitioner's tactics, which the Board termed "deliberately provocative" (R. 68), resulted in the immediate formation of a picket line by the warehousemen who had been locked out. With the cooperation of teamsters, dock warehouse-

men, stevedores, and sailors, this picket line was maintained until September 27, 1935, with such effectiveness that eventually the movement of trucks from warehouse to wharves ceased entirely. Meanwhile, Huddleson, the general manager, refused repeatedly to reinstate the men except on "the understanding that the organizers * * * will stay away from them and leave them alone" (R. 62–72, 75–76).

The foregoing acts of petitioner, the Board found, have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof (R. 75–77). The Board concluded that petitioner had engaged in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act, and ordered petitioner to cease and desist from further interference and discrimination, to reinstate with back pay the 31 employees discriminatorily discharged, and to post appropriate notices (R. 79–83).

On January 4, 1937, the Board filed in the court below its petition for the enforcement of this order, pursuant to Section 10 (e) of the Act (R. 93–101). On July 31, 1937, the court rendered an opinion upholding the Board's order as to all of petitioner's employees at the Oakland plant (R. 104–17).[2]

[2] The order was modified to exclude application to the Seabright plant because the relation of that plant's operations to interstate commerce had not been established of record (R. 107, 116–117). The Board here takes no ex-

Judge Haney concurred in a separate opinion (R. 117–21), and Judge Wilbur dissented (R. 121–37). A decree of enforcement was entered on July 31, 1937 (R. 138–41).

On October 28, 1937, petitioner filed in this Court its petition for a writ of certiorari. The petition was granted on December 6, 1937. The petition states (pages 4–5) that the Board's findings with respect to the unfair labor practices alleged are not challenged. Accordingly, the sole issue before the Court is whether the National Labor Relations Act may validly be applied to petitioner's operations at its Oakland, California, plant.

## SUMMARY OF ARGUMENT

Petitioner is engaged in canning, packing, and shipping fruit and vegetables in Oakland, California. It is the fourth or fifth in size of such canneries in that state, which is the center of the canning industry in the United States; and annually ships large quantities of its products in interstate and foreign commerce. Stoppage of operations as a result of industrial strife in petitioner's plant would directly obstruct the movement of those commodities in interstate and foreign commerce. There thus exists a "close and intimate" relation between petitioner's operations and the flow of commerce; and the National Labor Relations Act

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ception to this limitation of its order. It does not construe the order as having been directed to petitioner's operations at the Seabright plant.

accordingly may validly be applied to petitioner's plant. *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation,* 301 U. S. 1, 41.[3]

1. This conclusion is not affected by the fact that the products processed by petitioner are grown in the State of California. In the *Jones and Laughlin* case the Court expressly stated that its decision did not turn on the conception that the manufacturing process was carried on in a "stream" or "flow" of commerce, wherein the raw materials arriving from without the state came to rest temporarily at the plant and later went forward again in interstate commerce (301 U. S. at 36). The contention that the stream of commerce had been broken the Court held was not relevant to the issue involved (301 U. S. at 41). The determinative factor was the obstructing effect of industrial strife upon the interstate movement of goods.

*Carter* v. *Carter Coal Company,* 298 U. S. 238, does not support petitioner's contention. The *Carter* decision did not purport to rest on the difference between mining operations and manufacturing enterprises which utilize raw materials obtained through the channels of interstate commerce. Nor did this Court in the *Jones & Laughlin* case, in holding that the *Carter* case was not controlling, suggest that it was to be distinguished upon such a ground.

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[3] See also *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49; *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58.

The danger of an obstruction to interstate commerce, and the appropriateness of the means adopted by the Congress to remove it, were the decisive factors in each decision.

The *Jones & Laughlin* decision establishes that the Congress has power to prevent the obstruction to interstate commerce caused by the unfair labor practices condemned in the present Act. Neither the fact nor the degree of obstruction to commerce in manufactured products can in reason depend upon the place of origin of the raw materials. As this Court stated in the *Jones & Laughlin* case, Congressional authority over interstate commerce extends to the protection of such commerce "no matter what the source of the dangers which threaten it" (301 U. S. at 36–37). No distinction can properly be drawn between activities which obstruct interstate commerce in raw materials, in manufactured products, or both.

The geographic fact of concentration of natural resources in particular regions, far from lessening national concern in the industries immediately dependent upon those resources, heightens it. It does so none the less because of the natural, if not necessary, circumstance of the location of such industries at the point of concentration of the resources. The view which petitioner urges would frustrate one of the great purposes of the com-

merce power as realized in this statute, by removing from the reach of Congressional protection industries whose operations in interstate and foreign commerce are of vital importance to the national welfare and whose interruption or cessation by industrial strife would create problems of the deepest national concern.

2. Approximately 37 per cent of the product of petitioner's plant is shipped in interstate or foreign commerce. The same employees prepare and ship both the goods which go to points outside California and those which do not. No separation of the employees into those working on goods destined for interstate shipment and those working on goods to be consumed in California is possible. Congress has power to regulate both interstate and intrastate activities when they are inseparably intermingled in this way. *Shreveport Case,* 234 U. S. 342. The suggestion that the power of Congress over such intermingled transactions disappears if more than 50 per cent of the transactions are intrastate would establish an arbitrary and impracticable rule of thumb in violation of the fundamental principle of the supremacy of federal power. A review of the decisions in which this Court has sustained federal regulation of intrastate activities because of their deleterious effects upon commerce demonstrates that the validity of such legislation has never turned upon whether the interstate commerce affected was greater in quan-

tity than the intrastate transactions which were necessarily subjected also to the regulation imposed. Clearly, protection to interstate commerce need not be withheld because in affording that protection intrastate commerce is also safeguarded.

## ARGUMENT

### PETITIONER'S OPERATIONS AT ITS OAKLAND PLANT HAVE A CLOSE AND INTIMATE RELATION TO A SUBSTANTIAL FLOW OF INTERSTATE AND FOREIGN COMMERCE; AND THE NATIONAL LABOR RELATIONS ACT IS, THEREFORE, APPLICABLE TO THE OPERATIONS AT THAT PLANT

Petitioner is engaged at its Oakland plant in canning, packing, and shipping fruits and vegetables, the bulk of which are grown in California (R. 14–15). It is the fourth or fifth in size of such canneries in that state, which is by far the most important center of the canning industry in the United States, producing in terms of the value of the product approximately three times as much as any other state (R. 692–694).[4] Among California

[4] Approximately 130 concerns operate 192 fruit and vegetable canneries in California, making up an industry which far exceeds in size the cannery industry of any other state. In 1933, a depression year, a yearly average of 84,274 wage earners were employed by the national canning industry (excluding sea food), of whom an average of 24,357 found employment in California. The latter figure rose to 60,855 during September, one of the four peak months. California accounted for 30 per cent of the $440,000,000 value of products of the industry in that year. The second most important state, New York, employed an average of 7,039

industries, the canning of food (excluding sea food) is first in the number of wage earners employed and is exceeded in the value of the product only by petroleum refining.[5] At times petitioner employs as many as 1,200 to 1,500 men at its Oakland plant, and during 1935 shipped from its warehouse at that plant an average of 3,000 to 4,000 cases of canned goods daily (R. 656, 219).

This enterprise of large proportions is, to a substantial degree, dependent upon interstate and foreign commerce for the regular marketing of its products. From the data supplied by petitioner it appears that, during 1935, 627,000 cases of its goods were shipped in such commerce, this amount constituting 37 per cent of petitioner's total pack of

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workers, and accounted for one-tenth of the value of products of the industry (Bd. Exs. 15, 28). California maintained substantially the same position in 1935, canning in that year 75 per cent of the total United States pack of asparagus, 65 per cent of the spinach, 96 per cent of the apricots, 80 per cent of the orange juice, 98 per cent of the peaches, 31 per cent of the pears, and 47 per cent of the plums. U. S. Census of Manufactures (1935), *Canning and Preserving*, pp. 4, 6. In 1934, California produced more than half of the 50,435,153 cases of canned fruits and vegetables flowing from canneries located in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, loosely referred to in the trade as the "western" area. This area in the previous year produced 78 per cent of the entire American production of canned fruits and 14 per cent of the canned vegetables (Bd. Exs. 24, 33, 34, 36).

[5] U. S. Census of Manufactures (1933), *California, Summary of Industries*, pp. 1–8.

1,699,270 cases (R. 407).[6] There is continuous loading and shipping of products during the entire year (R. 665–66). Petitioner utilizes the services of interstate carriers by water, truck, and rail, a spur track connecting the Oakland plant with the main line of the Southern Pacific Railroad (R. 153, 156, 661–64, 667, 668). Shipments are made to Connecticut, Illinois, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Missouri, New York, Ohio, and Pennsylvania, as well as to foreign countries (R. 153–54, 220, 663). The water shipments are facilitated by the location of the plant in the San Francisco Bay area, the greatest shipping center for canned fruits and vegetables in the United States.[7]

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[6] Petitioner's counsel stipulated that 9.02 per cent of its pack, or 153,274 cases, was shipped to foreign countries (R. 407). Aside from the foreign shipments, 69.68 per cent of the pack, or 1,184,051 cases, were billed to purchasers located outside the State of California, but 60 per cent of this amount or 710,431 cases, was not shipped out of the state (R. 408, 658). 473,620 cases thus move in interstate commerce, giving, with the foreign shipments, a total of 626,894 cases which leave the state. This constitutes 36.89 per cent of the total pack, as the Board found (R. 61). The slight inaccuracy involved in the Circuit Court of Appeals' computation that 39 per cent of the pack entered foreign and interstate commerce (R. 106) can, of course, have no material bearing upon the issue here presented.

[7] Approximately 80 per cent of the total 1933 American exports of three canned fruits and two canned vegetables were from this area (Bd. Exh. 25). Over the ten year period ending in 1931 shipments of canned goods from the entire San Francisco Bay area were exceeded in im-

Upon the basis of these undisputed facts, it is clear that the court below did not err in holding the National Labor Relations Act validly applicable to petitioner. At the last term this Court upheld the Act as an appropriate exercise of federal power, and laid down as the test of its permissible application whether "stoppage of * * * operations by industrial strife" would result in substantial interruption to the free flow of interstate commerce. *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation,* 301 U. S. 1, 41. Where such interruption would occur, the Court pointed out, unfair labor practices on the part of employers, shown by long experience to be "prolific causes of strife," have a "close and intimate relation" to interstate commerce and are subject to federal regulation under this Act, designed to prevent them (301 U. S. at 42, 43). In the present case, stoppage of operations by strife

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portance only by petroleum; such shipments constituted 35 per cent of the total foreign commerce and 45 per cent of the other water-borne commerce originating from Oakland, one of the two constituent ports making up the San Francisco Bay Customs District. Corps of Engineers, U. S. Army; U. S. Shipping Board, Port Series No. 12, *The Ports of San Francisco and Oakland*, 1933, pp. 160, 278. Of the 448,601 tons of intercoastal traffic in canned fruits received by the east coast ports in 1936, 384,495 tons or 85.7 per cent, originated in California ports, of which 361,037 tons, or 80.5 per cent, originated in San Francisco. New York City received nearly half of these shipments, or 191,044 tons, of which 162,135 tons originated in California ports, 150,349 tons coming from San Francisco. U. S. Maritime Commission, Division of Research, *United States Waterborne Intercoastal Traffic, 1936* (Report No. 317), pp. 2–13.

between petitioner and its production or warehouse employees at the Oakland plant would directly obstruct—and in fact did obstruct[8]—the flow of large quantities of canned fruits and vegetables from that plant to other states and foreign countries. The cessation of shipments of such magnitude cer-

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[8] Immediately after the lockout, petitioner's warehousemen formed a picket line at Oakland which was maintained 24 hours a day from August 8 to September 27, 1935, and eventually stopped all movement of goods from the plant to the wharves. They also appealed to the Oakland Labor Council, with the result that workers who had theretofore performed successive steps in shipping petitioner's product would no longer do so. For more than six weeks the teamsters who hauled the goods to the docks, the warehousemen who there unloaded the trucks prior to reloading the canned goods into ships, the stevedores who customarily did the reloading, and those union members of the crews of steam schooners who stowed cargo, all declined to handle the product. Bargemen and teamsters at Sacramento joined in the boycott. Only when Judge Sloss, Federal arbiter, ruled on September 27, that the action of the stevedores violated the Longshoremen's Arbitration Award of October 1934, did the tie-up cease. The warehousemen then filed charges with the Board (R. 185–88, 194–98, 200–01, 233, 417–24, 438–40, 443–46, 462).

It is scarcely necessary to point out that these occurrences are important only as illustrating the appropriateness of the protection afforded by the Act. They do not, as petitioner suggests (Supplemental brief, pp. 38–41), constitute the claimed "basis" of the Board's jurisdiction; and the legality or illegality of the acts involved is in no way in issue. The reasonable likelihood of interruption of commerce by industrial strife supports jurisdiction without proof of actual obstruction. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41–42. The fact that obstruction occurred in a particular form does not determine federal power; nor is it to be assumed that

tainly cannot be regarded as without national significance and concern.

Petitioner's business is indistinguishable, in the interstate characteristics which are relevant under the principles of the *Jones & Laughlin* case, from the manufacturing enterprises held to come within those principles in *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49, and *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58. Those enterprises were of moderate size, as contrasted with the Jones & Laughlin Steel Corporation, but each was dependent to a substantial degree upon the interstate movement of goods, which would cease or be diminished as a result of industrial strife originating from unfair labor practices in its manufacturing operations.[9]

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the Congress intended, or is empowered, to protect interstate commerce only from obstruction occurring without violation of law.

[9] Following these decisions, the Circuit Courts of Appeals for the Second, Fourth, and Sixth Circuits, the only circuits in addition to the Ninth to pass on the question, have enforced orders of the Board against manufacturing concerns differing, we think, in no material respect from petitioner. *National Labor Relations Board* v. *Remington Rand, Inc.* (C. C. A. 2d), decided February 14, 1938; *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), cert. den. 58 Sup. Ct. 55; *Mooresville Cotton Mills* v. *National Labor Relations Board* (C. C. A. 4th, Jan. 4, 1938); *Renown Stove Co.* v. *National Labor Relations Board*, 90 F. (2d) 1017 (C. C. A. 6th). The Eighth and Tenth Circuits have made similar rulings in cases not

Petitioner, although it concededly ships large quantities of its products in interstate and foreign commerce, and is thus substantially dependent upon such commerce, seeks to distinguish this uniform line of precedents upon two grounds: (1) in the cases decided by this Court the Act was applied to employees engaged in an intermediate process in an interstate flow of goods, first as raw materials and finally as finished products, whereas the bulk of the fruits and vegetables canned by petitioner are grown in California and the operations in which the employees are engaged therefore precede any flow of interstate commerce; (2) in those cases a preponderant portion of the product was shipped in interstate commerce, whereas more than 50 per cent of petitioner's pack remains within the State of California.

We consider these grounds separately. Neither, we submit, affords a valid distinction.

1. THE ACT MAY VALIDLY BE APPLIED TO PREVENT UNFAIR LABOR PRACTICES WHICH OBSTRUCT INTERSTATE COMMERCE IN THE PRODUCTS OF A PLANT WHOSE RAW MATERIALS ARE NOT OBTAINED FROM OUTSIDE THE STATE

Accepting petitioner's contention that there is no movement of materials and supplies to the Oak-

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directly involving enforcement of orders of the Board. *Pratt* v. *Oberman & Co., Inc.*, 89 F. (2d) 786 (C. C. A. 8th); *Wilson & Co., Inc.*, v. *Gates et al.*, 90 F. (2d) 247 (C. C. A. 8th); *General Motors Corp.* v. *Bajork et al.*, 90 F. (2d) 248 (C. C. A. 8th); *Beman et al* v. *Iowa Mfg. Co.*, 90 F. (2d) 249 (C. C. A. 8th); *Lyons et al.* v. *Eagle-Picher Lead Co. et al.*, 90 F. (2d) 321 (C. C. A. 10th); see also *Bowen et al.* v. *James Vernor Co.*, 89 F. (2d) 968 (C. C. A. 6th).

land plant from without the state,[10] it is clear that applicability of the Act, under the *Jones & Laughlin* decision, remains wholly unaffected by this circumstance. In that case the Court made it clear that its decision did not rest upon the conception that the Steel Company's manufacturing operations were carried on in a stream of commerce consisting of raw materials which were brought into the state of production and thereafter resumed their interstate journey in altered form. The Court said:

> The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a "flow" of interstate or foreign commerce. Burdens and obstructions may be due to injurious actions springing from other sources. * * * That power is plenary and may be exerted to protect interstate commerce "no matter what the source of the dangers which threaten it" (301 U. S. at 36, 37).

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[10] The Board found that the bulk of the fruits and vegetables canned and shipped by petitioner was grown in California (R. 60). The hominy is obtained from other states (R. 689–90). No testimony was adduced as to the sources of necessary supplies. Supplies ordinarily utilized by a cannery such as petitioner's include cans, belts, valves, discs, sugar, nails, wire, lubricants, labels, knives, pans, kitchen equipment, uniforms, gloves, caps, trucks, truck equipment, chains, gears, pulleys, sprockets, bearings, shipping cases and boxes, glue, paste, paint, ink, lye, sprays, cleansers, sterilizers, and other chemicals (Bd. Exh. 36).

The Court gave "full weight" to the argument of the Steel Corporation that the stream of commerce was broken by the lengthy rest of the materials at the plant and the manufacturing operations to which they were there subjected, but held the contention not relevant to the issue involved (301 U. S. at 41). The Act was explicitly sustained as a regulation not of activities *in* interstate commerce but of activities which are "intrastate in character when separately considered" (p. 37). "* * * the fact that the employees here concerned were engaged in production," the Court stated (p. 40), "is not determinative." The determinative factor was the obstructing effect of industrial strife upon the interstate movement of goods.

In accordance with this ruling the Fourth and Tenth Circuits have held, as did the court below, that the Act is fully applicable to enterprises from whose plants flow a substantial stream of goods into interstate commerce, although there is comparatively little or no antecedent import of raw materials from without the state. *Mooresville Cotton Mills* v. *National Labor Relations Board,* decided January 4, 1938 (C. C. A. 4th); *Lyons et al.* v. *Eagle-Picher Lead Mining Co.,* 90 F. (2d) 321 (C. C. A. 10th). The Ninth Circuit has also reaffirmed its conclusion in the present case, holding the Act applicable to a lumber mill which received no raw materials from without the state. *National Labor Relations Board* v. *Carlisle Lumber Co.,* de-

cided December 13, 1937. There are no contrary decisions.

Petitioner invokes, as bearing upon the issue here presented, numerous decisions dealing with the taxing and regulatory powers of the states. E. g., *Coe* v. *Errol,* 116 U. S. 517; *Kidd* v. *Pearson,* 128 U. S. 1; *Lehigh Valley R. Co.* v. *Pennsylvania,* 145 U. S. 192; *Public Utilities Commission* v. *Landon,* 249 U. S. 236; *Heisler* v. *Thomas Colliery Co.,* 260 U. S. 245; *Chassaniol* v. *Greenwood,* 291 U. S. 584. These cases are wholly inapposite. This Court has repeatedly pointed out that state and federal powers with respect to interstate commerce are not correlatives. *Swift & Co.* v. *United States,* 196 U. S. 375, 400; *Stafford* v. *Wallace,* 258 U. S. 495, 525; *Minnesota* v. *Blasius,* 290 U. S. 1, 8; *Townsend* v. *Yeomans,* 301 U. S. 441. Particularly—indeed, necessarily—is this so where, as here, federal power is exerted for the protection of interstate commerce over transactions which in themselves are intrastate. No one has supposed that the decision in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1, could be cited with pertinence upon an issue of the taxing power of the Commonwealth of Pennsylvania.

Petitioner relies upon *Carter* v. *Carter Coal Co.,* 298 U. S. 238, as establishing that the burdening effect of its unfair labor practices upon commerce in its product cannot support federal regulation in the absence of a flow of materials to its plant

from outside the state. In the *Jones & Laughlin* case that decision was strongly pressed upon the Court; and the Court held it not to be controlling. It is likewise not controlling here.

In the *Carter* case a majority of the Court [11] held invalid the labor provisions of the Bituminous Coal Conservation Act. The Court's opinion referred (p. 308) to the Government's contention that interstate commerce in coal was greatly affected by "the evils which come from the struggle between employers and employees over the matter of wages, working conditions, the right of collective bargaining, etc., and the resulting strikes, curtailment, and irregularity of production and effect on prices." To this contention the Court replied (pp. 308–309) that "the conclusive answer is that the evils are all local evils over which the federal government has no legislative control"; that "the controversies and evils, which it is the object of the act to regulate and minimize are local controversies and evils affecting local work"; and that "such effect as they may have upon commerce, however extensive it may be, is secondary and indirect." It is manifest from the *Jones & Laughlin* case and companion cases that this language can have no application in cases arising under the National Labor Relations Act. Those decisions establish beyond equivocation that the evils which come from unfair labor

[11] Three members of the Court expressly refrained from expressing any opinion as to the validity of the labor provisions (298 U. S. at 324). The statement to the contrary in the brief for the petitioner (p. 23) is an inadvertence.

practices of employers are not local evils, in the sense of being immune from regulation under that Act, when their effect is to burden and obstruct interstate commerce.

Petitioner, in effect, contends that the *Jones & Laughlin* decision rejected the reasoning of the *Carter* case only to the extent of its application to unfair labor practices which obstruct interstate commerce in products manufactured from raw materials procured outside the State. The reasoning in neither case, however, turned upon the source of the raw materials utilized in the products whose movement in interstate commerce was obstructed. The danger of an obstruction to interstate commerce, and the appropriateness of the means adopted by the Congress to remove it, were the decisive factors in each decision. The differences in the regulatory methods and purposes of the two enactments, as well as in their scope, made it unnecessary for the Court in upholding this Act to overrule the *Carter* decision. The question whether the later decision may have cast doubt upon the earlier likewise need not be considered here.[12] It is

[12] Judge Denman in the court below thought the present case "identical in fact and relevant principle" with the *Carter* case and considered that the *Carter* case had been "overruled" by the *Jones & Laughlin* decision (R. 108–110). We did not take this position in the circuit court of appeals, nor do we here. It may be noted that neither the Fourth Circuit in the *Mooresville* case nor the Tenth Circuit in the *Eagle-Picher Lead Co.* case, *supra*, p. 21, felt called upon to hold the *Carter* case "overruled."

sufficient that the earlier decision clearly does not qualify the later.

The opinion in the *Jones & Laughlin* case is a complete refutation of the petitioner's suggested distinction. The effect of unfair labor practices in burdening and obstructing interstate commerce, whether in raw materials or manufactured products, is the basis of the decision. Neither the fact nor the degree of obstruction to commerce in manufactured products can in reason depend upon the place of origin of the raw materials. And the Court's opinion will be searched in vain for a suggestion that, if obstruction in fact be threatened, the federal authority is powerless to prevent it. Concerning the *Carter* case itself the *Jones & Laughlin* opinion states only that the Court had there been of the opinion that—

> * * * the provisions of the statute relating to production were invalid upon several grounds—that there was improper delegation of legislative power, and that the requirements not only went beyond any sustainable measure of protection of interstate commerce but were also inconsistent with due process (301 U. S. at 41).

Neither this statement nor any other statement in the opinion attributes significance to the fact that the bituminous coal industry involved in the *Carter* case occasioned no flow of commerce *into* the state of production.

The question whether the *Carter* case could be distinguished was acute in the *Jones & Laughlin* case. The ready formula for a distinction now offered by petitioner was not there overlooked. On the contrary, the soundness of such a distinction was elaborately discussed by counsel. In these circumstances the Court's opinion can only be regarded as evincing a deliberate judgment that the distinction was unsound. For the Court not merely refrained from accepting it. As before pointed out, the Court expressly stated that Congressional authority "is not limited to transactions which can be deemed to be an essential part of a 'flow' of interstate or foreign commerce" but extends to the protection of interstate commerce *"no matter what the source of the dangers which threaten it"* (301 U. S. at 36–37). These statements foreclose decisively the contention that unfair labor practices which in fact obstruct interstate commerce—be it commerce in manufactured products, or in raw materials, or in both—are exclusively "local evils over which the federal government has no legislative control."

The "familiar principle" invoked by the Court in the *Jones & Laughlin* case, that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the Congressional power, recognizes no distinction between effects upon incoming or outgoing interstate commerce, or effects upon both. The

principle has received frequent application in decisions under the Sherman Act.[13] There Congressional power has been sustained although the burdening activity was intrastate and the flow of commerce either had not begun or had terminated. *Coronado Coal Co.* v. *United Mine Workers of America,* 268 U. S. 295; *Duplex Printing Press Co.* v. *Deering,* 254 U. S. 443; *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Association,* 274 U. S. 37; *Local 167, Brotherhood of Teamsters* v. *United States,* 291 U. S. 293, 297. Similarly here the obstructive effect of unfair labor practices upon interstate commerce differs in no significant way, whether the commerce affected be outgoing, incoming, or both.

Petitioner can escape the force of the *Jones & Laughlin* decision only by showing either (1) that the effect of unfair labor practices upon outgoing

[13] Inherent differences between a punitive and a protective statute have no bearing upon the identical, direct and substantial relation to commerce required in the application of both. The power to prevent a burden to commerce by appropriate regulation designed to remove its causes follows *a fortiori* from the power to alleviate that burden when it occurs. Cf. *Virginian Railway Co.* v. *System Federation No. 40,* 300 U. S. 515, 556. The report of the Committee on Labor of the House of Representatives said of the Act (H. Rep. 1147, 74th Cong., 1st Sess., at p. 9): "It is believed that the cases which have sustained federal intervention in labor disputes under the anti-trust laws are broad enough to sustain this bill, which is designed to give labor federal protection in the same areas which previously were subjected to federal restraint."

interstate commerce in manufactured products varies in *kind* according to whether the same practices do or do not affect incoming interstate commerce in raw materials, or (2) that the effect upon outgoing commerce is immaterial and that the decisive relationship justifying federal regulation is that with respect to commerce in raw materials. Neither proposition can draw color of authority from the *Jones & Laughlin* opinion or color of reason from the findings of the Congress and the experience upon which they were predicated. If there be power to regulate unfair labor practices affecting incoming commerce in raw materials, there is plainly power to regulate similar practices affecting the same commerce in the state of origin (compare *Carter* v. *Carter Coal Co.*, 298 U. S. at 309–310); nor can a distinction be drawn between outgoing commerce in raw materials and similar commerce in the products of those materials. National concern in the unobstructed flow of interstate commerce extends peculiarly to the nation-wide distribution of local materials and products processed from local materials. The most conspicuous characteristic of the organization of industry on a national scale is a national market. And where interdependence of factory and interstate market exists, that interdependence can scarcely be thought to vary significantly according to whether the place of manufacture be the place of origin of the raw materials, or otherwise. The geographic

fact of concentration of natural resources in particular regions, far from lessening national concern in the industries which spring from those resources, heightens it. The natural, if not necessary, circumstance that such industries are located at the point of concentration of the resources clearly has no decisive weight.

The view which petitioner urges would frustrate one of the great purposes of the commerce power as it is realized in this statute. By removing from the protection of the Act such nationally significant industries as the canning, packing, and preserving of produce, lumbering, quarrying, mining, production of oil and gas, and enterprises engaged in the immediate processing of these resources, it would expose to obstructions of paramount national concern interstate and foreign commerce of tremendous bulk, value, and intrinsic importance.[14] It is apparent that an enterprise so engaged may ship

[14] During 1936 Class I Railways of the United States carried 1,553,474,740 tons of freight, consisting of the products of mines, quarries, and forests. These shipments constituted 62 per cent of the total freight carried by those roads. In this computation are included the following products: coal, coke, iron, copper, lead, zinc, and other ores, sand and gravel, stone, crude petroleum, asphalt, salt, phosphate rock, sulphur, lumber, rosin turpentine, and crude rubber. Excluded are agricultural products, animals and animal products, and manufactures. Interstate Commerce Commission, Bureau of Statistics, *Freight Commodity Statistics, Class I Steam Railways in the United States, 1936*, p. 7.

out of the state in which it is located a product which far exceeds, by every standard, the combined materials and products crossing state lines to and from a manufacturing plant of the type to which this Court has held the Act applicable. Petitioner, therefore, is contending that Congress may protect commerce from the lesser burden but not from the greater, though both are affected by the same form of activity.

To any just conception of the national interest in avoiding disruptions of the national economy, the line of demarcation which petitioner seeks to draw is irrelevant. The coal industry, which petitioner would exclude from the operation of the Act, is a prime example of the very experience which prompted its enactment. Public understanding admits of no distinction between "the paralyzing consequences of industrial war" (301 U. S. at 41) in that industry and in the steel industry; and the Constitution, we submit, requires none. The steel strike of 1919–1920 (*id.* at 43) has its parallels, among others, in the anthracite coal strike of 1901 and the bituminous coal strikes of 1919 and 1922. In the coal fields, no less than in the steel mills, the effect of industrial strife upon interstate commerce is immediate and may be catastrophic (301 U. S. at 41). The coal industry, no less than the steel industry, "is one of the great basic industries of the United States, with ramifying activities affecting interstate commerce at every point" (*id.* at 43).

To ask this Court to distinguish between these two primary industries in terms of the effect upon interstate commerce of unfair labor practices therein is, indeed, to ask it to shut its eyes "to the plainest facts of our national life" (301 U. S. at 41).[15]

2. THE CIRCUMSTANCE THAT THE INTERSTATE SHIPMENTS AFFECTED BY PETITIONER'S UNFAIR LABOR PRACTICES WERE LESS THAN FIFTY PER CENT OF ITS TOTAL PACK IS IMMATERIAL

Petitioner's second argument—that the Act may not be applied here because less than 50 per cent of the total pack is shipped out of California—is likewise without merit. It appears from the statistics supplied by petitioner that during 1935 it shipped in interstate and foreign commerce 627,000 cases of canned goods, a substantial quantity of food by any standard as well as a considerable portion of petitioner's total pack. Petitioner's unfair labor

[15] Petitioner likewise ignores realities in conceiving that the terms of its sales contracts, passing title to the consignee when the goods are delivered by petitioner to a carrier, should determine applicability of the Act. The Friedman-Harry Marks Clothing Company sold its product f. o. b. Richmond, where its plant was located (301 U. S. at 72). In the *Mooresville* case, *supra*, the goods were sold f. o. b. Mooresville, but the Fourth Circuit properly held that "this circumstance is merely incidental to the disposition of the goods in the state of manufacture, and has no relation to the interference with interstate commerce by labor disputes which the statute was designed to prevent." See *Pennsylvania R. Co.* v. *Clark Bros. Coal Mining Co.*, 238 U. S. 456, 465–66, 468; cf. *South Covington and Cincinnati Street Ry. Co.* v. *City of Covington*, 235 U. S. 537, 545.

practices, therefore, have the "close and substantial relation" to commerce recognized in the *Jones & Laughlin* case and the Act may be applied to prevent them (301 U. S. at 37).[16]

In petitioner's plant the same employees prepare and ship both the goods which go to points outside California and those which do not. Concededly, no separation of the employees into those working on goods destined for interstate shipment and those working on goods to be consumed in California is possible. Under these circumstances federal regulation may be applied to petitioner's relations with all of the employees. Compare *Shreveport Case,* 234 U. S. 342; *Minnesota Rate Cases,* 230 U. S. 352, 399; *Southern Railway* v. *United States,* 222 U. S. 20.

Petitioner contends, however, that because its business is "predominantly local," the entire subject of labor relations in its plant is reserved to the

[16] The Government's brief in the *Jones & Laughlin* case suggested to the Court three possible tests of the direct and necessary effect of recurring industrial strife upon interstate commerce: (a) such strife burdens or obstructs commerce when it occurs in an enterprise which lies in a stream or flow of commerce; (b) such strife prevents a substantial proportion of all the commerce in a particular commodity; or (c) such strife prevents interstate sales or shipments of a substantial volume of goods which would otherwise move in commerce. The Court laid the first aside (*supra*, pp. 20–21), could not have accepted the second (the Friedman-Harry Marks Clothing Company produced less than one half of one per cent of the men's clothing manufactured in the United States (301 U. S. at 87)) and, we submit, clearly adopted the third.

control of the state. Judge Wilbur, dissenting in the court below, accepted this argument (R. 131) and erected what Judge Denman termed "an academically arbitrary 50% as the boundary line between the two jurisdictions" (R. 115). The difficulties and absurdities to which the attempted application of such a rule of thumb would lead were concisely stated in Judge Denman's opinion (R. 115):

> The suggestion * * * ignores the practical necessities of industry. Shall it be 50 per cent in volume or price? What happens when for the first 6 months of the year 60 per cent is exported and 40 per cent is domestic, and for the rest of the year the percentages are reversed? Does the Federal control end on June 30th? On which is the burden of proof, the state interest or the Federal? How unfair may be the competition between the industry producing the 60 per cent for export under Federal regulation and its competitor with 40 per cent under state regulation or no regulation at all!
>
> Industry and business cannot thrive, in some cases it could not exist, in the uncertainty of such an abstract mathematical solution of the problem.[17]

[17] Other problems are suggested by the fact that an enterprise producing a variety of products may ship into interstate or foreign commerce a majority of some products and a minority of others. In 1935 petitioner shipped out of the state 85 per cent of the peaches, pears, apricots, spinach, and asparagus canned by it (R. 687–688, 699).

Had petitioner produced only the large amount of goods sent out of the state, it would not be open to question that the requisite "close and substantial" relation to interstate and foreign commerce was present. The effect of a stoppage of operations upon commerce is no less direct and no less substantial because, in addition, petitioner packed a somewhat larger quantity which did not leave the state. Those local sales assuredly afford no justification for granting petitioner immunity from the Act while holding subject to it smaller and competing concerns whose shipments are predominantly interstate.

The proposed percentage test is a transparently gratuitous gloss upon the statute. Nor has it any foundation in the Constitution. A review of the decisions in which this Court has sustained federal regulation of intrastate activities because of their deleterious effects upon commerce demonstrates that the validity of such legislation has never turned upon whether the interstate commerce affected was greater in quantity than the intrastate transactions which were necessarily subjected also to the regulation imposed. Clearly, protection to interstate commerce need not be withheld because in affording that protection local commerce is also safeguarded.

Thus, in passing upon federal power to ameliorate burdensome effects upon interstate commerce through regulation of discriminatory intrastate railroad rates, this Court has not inquired whether

the commerce protected surpassed in value or importance the intrastate trade necessarily affected. *Shreveport Case,* 234 U. S. 342, 351, 355. If the intrastate rates bear a "close and substantial relation" to interstate commerce and the two "are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the State, and not the Nation, would be supreme within the national field." (*Ibid.,* at pp. 351–352.) Similarly, the validity of federal regulation designed to obtain for interstate carriers returns from their intrastate traffic which are reasonably proportionate to those accruing from interstate carriage has not been regarded as depending upon which type of business preponderated. *Railroad Commission of Wisconsin* v. *Chicago, B. & Q. R. Co.,* 257 U. S. 563; *Florida* v. *United States,* 282 U. S. 194.[18]

[18] Examples of the principle may be multiplied. Applicability of federal legislation restricting the hours of labor of railroad employees engaged in interstate commerce is dependent neither upon a dominance of interstate traffic on the lines of the carrier nor upon the respective number of hours spent by the employees on interstate and intrastate hauls. Cf. *Baltimore & Ohio R. Co.* v. *Interstate Commerce Commission,* 221 U. S. 612, 616–619. And federal power comprehends a requirement that all locomotives and cars "used on any railroad engaged in interstate commerce" be equipped with safety appliances, without regard to whether a major portion of the traffic carried is interstate. Cf. *Southern Railway* v. *United States,* 222 U. S. 20, 26–27; *Moore* v. *Chesapeake & Ohio Ry. Co.,* 291 U. S. 205, 213–214.

In cases arising under the Sherman Act, the Court likewise has never treated as material the comparative percentage of interstate and intrastate transactions affected by the illegal activity. Compare *Loewe* v. *Lawler,* 208 U. S. 274, 304; *Bedford Cut Stone Co. et al.* v. *Journeymen Stone Cutters' Association,* 274 U. S. 37, 41; *Coronado Coal Co. et al.* v. *United Mine Workers of America,* 268 U. S. 295, 308. On the contrary the Court has repeatedly emphasized that the substantiality of the effect upon interstate commerce, or the intention of the actors with respect to such commerce, is controlling.[19] *United Mine Workers of America et al.* v. *Coronado Coal Co. et al.,* 259 U. S. 344,

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Compare, also, the following cases in which state courts have held the Federal Employers' Liability Act applicable despite a dominance of intrastate commerce: *Western Ry. of Alabama* v. *Mays,* 197 Ala. 367, 72 So. 641; *Lindley* v. *Wabash Ry. Co.,* 120 Neb. 195, 231 N. W. 812, 815, certiorari denied, 283 U. S. 863.

[19] The approach of the lower federal courts has been similar. In *United States* v. *Workingmen's Amalgamated Council of New Orleans,* 54 Fed. 994 (C. C. E. D. La.), an injunction issued under the Sherman Act against a general strike, including a strike of transportation workers, on the ground that "one of the intended results * * * was the forced stagnation of all the commerce which flowed through New Orleans." There was no inquiry as to the comparative effect on interstate and intrastate trade. The statute has been applied to industrial boycotts without mention of what proportion of the business done by the manufacturer at whom the boycott was directed consisted of interstate trade. *Irving* v. *Neal,* 209 Fed. 471; *Boyle* v. *United States,* 259 Fed. 803; *Columbus Heating & Ventilating Co.* v. *Pittsburgh Building Trades Council et al.,* 17 F. (2d) 806 (W. D. Pa.).

411; *Industrial Association* v. *United States,* 268 U. S. 64, 81; cf. *Coronado Coal Co. et al.* v. *United Mine Workers of America,* 268 U. S. 295, 308–310; *United Leather Workers* v. *Herkert & Meisel Trunk Co.,* 265 U. S. 457; *International Organization, United Mine Workers et al.* v. *Red Jacket Consolidated Coal & Coke Co.,* 18 F. (2d) 839, 845 (C. C. A. 4th). There is no indication that if such a substantial effect on interstate commerce is shown, the effect on intrastate commerce is of any importance. Compare *Local 167, International Brotherhood of Teamsters* v. *United States,* 291 U. S. 293, 299–300. Thus, in *Swift & Company* v. *United States,* 196 U. S. 375, 396–397, the Court, in sustaining an injunction issued on demurrer to the bill, said:

> Although the combination alleged embraces restraint and monopoly of trade within a single State, its effect upon commerce among the States is not accidental, secondary, remote, or merely probable. On the allegations of the bill *the latter commerce no less, perhaps even more, than commerce within a single State is an object of attack.* [Italics supplied.]

The uncertainty, engendered by absence of a specific allegation concerning the respective amounts of each type of commerce obstructed or sought to be obstructed, was not deemed determinative of federal power, where it was apparent from the bill

that interstate commerce of substantial bulk and importance was the object of attack.

The argument now put forward that federal power, as exercised in this Act, must be measured by a novel and arbitrary 50 per cent test appears to be prompted solely by fear lest the states be left "only the empty hull of government" (R. 125). This fancied menace to our Federal Union is baseless. The power to protect interstate commerce is exercised in fulfillment, not in denial, of our federal form of government. The power is co-extensive with the commerce it protects; the extensiveness of that commerce is a warrant for the Act's application, not for its limitation. Nor has the Act, in any view, the pervasiveness imputed to it. The standard of a close and intimate relation to interstate commerce, excluding on its face labor practices in hosts of enterprises, cannot be said to be framed in disregard of the constitutional principle of division of governmental power.

The Act affords an avenue open in each case for consistent consideration of the question whether, in the light of the relation of industrial strife to interstate or foreign commerce, its application is justified.[20] *National Labor Relations*

[20] On the facts here presented, Judge Haney's observation that the effect of unfair labor practices upon interstate commerce would be "direct and immediate" if that commerce consisted of but one per cent of the goods produced (R. 120–121) was not necessary to the decision.

*Board* v. *Jones & Laughlin Steel Corporation,* 301 U. S. at 32, 37. The administrative procedure provided by the Congress serves to confine the Act's application rather than to extend it to its maximum possible bounds. The varied and often complex questions of administrative and constitutional jurisdiction which may be presented cannot successfully be solved in advance by singling out one element—a specific percentage by volume of interstate shipments—as controlling. The effect of industrial strife in the particular enterprise upon interstate and foreign commerce, as shown not only by the amounts, absolute and relative, but by the continuity of its interstate shipments; the relationship of that enterprise to the industry of which it is a part; and the characteristic organization of the industry as a whole may all be relevant factors for administrative consideration, subject to judicial scrutiny.

In preference to reliance upon this process, as contemplated by the Congress, petitioner invites this Court, in anticipation of administrative indiscretion, to invent a limiting rule of thumb. Compare *Myers* v. *Bethlehem Shipbuilding Corporation,* decided January 31, 1938. The dangers implicit in this invitation far exceed, in imminence and gravity, those which it is alleged must be escaped. The Court is asked, without warrant in the Act, to lay down a hard and fast rule which is incapable of sensible administration and

whose only possible persuasiveness derives from its application to other cases than the one before the court. It is asked to do so without knowledge of the facts upon which the ruling is based and without consideration of the intricacies of interstate and foreign commerce. It is asked to lay down a rule which, as here applied, would bring into question the very principle of the supremacy of federal power itself.

The doctrine advocated by petitioner would remove from federal protection interstate and foreign commerce of vast bulk and intrinsic importance—all of such commerce carried on by persons or firms which happen to be engaged in a slightly larger percentage by volume of intrastate business. There is no constitutional justification for such shackling of the federal control over interstate and foreign commerce. The Congress is granted power to regulate—which means to protect—all interstate commerce, not merely selected portions thereof. The intermingling of intrastate and interstate transactions results, not in the disappearance of federal power, but in its extension to the inextricable transactions which are intrastate. To hold otherwise, as this Court pointed out in the *Shreveport Case,* 234 U. S. 342, would be to deny the constitutional mandate that "this Constitution and the laws of the United States * * * made in pursuance thereof * * * shall be the supreme law of the land."

## CONCLUSION

It is respectfully submitted that the judgment of the court below should be affirmed.

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U. S. GOVERNMENT PRINTING OFFICE: 1938